

**ORIGINAL**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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JUN 11 2003

Federal Communications Commission  
Office of Secretary

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations  
(Sells, Willcox and Davis-Monthan  
Air Force Base, Arizona)

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MB Docket No. 02-376  
RM-10617

To: Assistant Chief, Audio Division  
Media Bureau

**SUPPLEMENT**

Lakeshore Media, LLC ("Lakeshore"), by its counsel, hereby submits this Supplement in the above-captioned proceeding. This Supplement responds to matters raised for the first time in reply comments, and is accompanied by a separate motion for its acceptance. On April 18, 2003, Journal Broadcast Corporation ("Journal") filed reply comments purporting to identify several defects in Lakeshore's counterproposal. In fact, none of the matters raised in the reply comments constitutes a defect, and Lakeshore's counterproposal should be promptly granted in order to realize its substantial public interest benefits.

**A. *Davis-Monthan Air Force Base is a Community for Allotment Purposes.***

Journal observes that Davis-Monthan Air Force Base is fully enclosed by the city of Tucson, Arizona. Journal may be correct on that score, but its conclusion that Davis-Monthan Air Force Base is somehow precluded thereby from receiving its own FM allotment is certainly incorrect. To take one example, Speedway, Indiana is completely enclosed by Indianapolis, and lost its autonomy in 1970. Yet it qualifies as a community for allotment purposes. *Lebanon and Speedway, Indiana*, 17 FCC Rcd 25064, 25065 (¶ 4) (2002). Not only did Lakeshore demonstrate that Davis-Monthan Air Force Base is a community for allotment purposes, it

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demonstrated that it is independent of Tucson according to the Commission's *Tuck* factors – a much higher standard to meet. The Commission recognizes that the proximity of the community to the urban center is a factor in the independence analysis, but it is a very minor factor. *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). Accordingly, Lakeshore is simply wrong that its geography disqualifies Davis-Monthan Air Force Base as a community. It is the *Tuck* analysis that governs, and on that ground, Davis-Monthan Air Force Base qualifies as an independent community.

**B. *Pacific-Refugio* is not applicable to the new Willcox allotments.** Journal asserts that Lakeshore's proposed new allotments of Channels 283C2 and 245C2 at Willcox, Arizona are barred by the Commission's recent decision in *Pacific Broadcasting of Missouri LLC*, *Memorandum Opinion and Order*, 18 FCC Rcd 2291 (2003) ("*Pacific-Refugio*"). This assertion is incorrect. Lakeshore proposed the two new allotments in order to avoid the possibility that any area would be left with no aural reception service (white area) or one aural reception service (gray area). *Pacific-Refugio* dealt with another situation entirely. There, the Commission directed the staff to cease the practice of making "backfill" allotments to avoid the loss of a community's sole *transmission* service. The policies with respect to transmission and reception services are different, and serve different goals.

The Commission requires that a replacement transmission service be constructed and placed on the air before a community's sole existing and operation station may relocate.<sup>1</sup> In recent years, this requirement has caused hardship and taxed the Commission's resources, since the allotment process has been backlogged by auction concerns, and rule making proponents have endeavored to implement their changes through applications for special temporary

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<sup>1</sup> *See, e.g., Barnwell, South Carolina et al.*, 17 FCC Rcd 18956 (2002).

authority. The *Pacific-Refugio* policy allows the Commission to avoid additional problems of this nature in the future.<sup>2</sup>

However, the problems that led to the *Pacific-Refugio* policy with respect to transmission service – *i.e.*, delays in activation of new allotments and potential abuse of STA processes – have no bearing whatsoever on the use of vacant allotments to preserve *reception* service. Unlike the situation with respect to the loss of a transmission service, the Commission considers a vacant allotment to be an adequate replacement for the loss of a reception service.<sup>3</sup> For this reason, the elimination of white or gray area does not require the activation of a station – it is eliminated when the allotment is made.<sup>4</sup>

**C. A Short Spacing to a Mexican Allotment Does Not Render the Davis-Monthan Air Force Base Allotment Defective.** Journal speculates that Channel 285C3 at Davis-Monthan Air Force Base will be a “substandard” allotment because of the need to protect Station XHNI-FM, Nogales, Mexico. This is only speculation, because an application has not yet been filed for the new Channel 285C3 allotment, and will not be filed until the allotment is made. In any event, the allotment is not defective. As Lakeshore demonstrated in the counterproposal, the allotment satisfies the Commission’s technical rules, including the principal community

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<sup>2</sup> See *Barnwell, South Carolina, supra* (refusing to grant interim STA to serve new community).

<sup>3</sup> *Greenup, Kentucky and Athens, Ohio*, 6 FCC Rcd 1493 (1991). See *Nogales, Vail and Patagonia, Arizona*, 16 FCC Rcd 20515 (2001) (counting vacant allotment at Rio Rico, Arizona); *Meeker and Craig, Colorado*, 15 FCC Rcd 23858 (2000).

<sup>4</sup> For this reason, Journal’s fears regarding a purported inconsistency in the activation of Channel 285C3 at Davis-Monthan are misplaced. See *Journal’s Engineering Statement at 3*. Based on the earlier cited case law, the Commission will not condition the Davis-Monthan allotment on the activation of Channel 283C2 at Willcox, because its activation is unnecessary for the purpose the allotment is intended to serve (*i.e.*, elimination of white and gray area). Indeed, Journal does not cite any case where the Commission has delayed the activation of a new allotment until white/gray area is eliminated by the “backfill” also being placed on the air.

coverage rule and the relevant spacing rules. Operation from the reference point with maximum facilities is not required. *See e.g., Nogales, Vail and Patagonia, Arizona*, 16 FCC Rcd 20515 (2001). Accordingly, the Channel 285C3 allotment can be properly made to Davis-Monthan Air Force Base.

**D. *Generalized FAA Concerns Do Not Render an Allotment Defective.*** Journal speculates that the FAA might not approve a proposal for a tower at the proposed reference coordinates for Channel 285C3 at Davis-Monthan Air Force Base or those for Channel 284C at Mesa, Arizona. Journal provides no support for either of these assertions. Indeed, the validity of these assertions is very much in doubt. The Mesa allotment is 10 kilometers from the nearest airport, which ordinarily would not give rise to any concern. As to the Davis-Monthan allotment, Journal's own map shows a "Communications Tower" closer to the runway than Lakeshore's proposed reference coordinates. *See Journal's Figure 1.1.* At the allotment stage, the Commission presumes that a technically feasible site exists. *Mount Wilson FM Broadcasters, Inc. v. FCC*, 884 F.2d 1462, 1463 (D.C. Cir. 1989). Journal's mere speculation is insufficient to overcome this presumption.

WHEREFORE, Lakeshore respectfully requests that the Commission deny Journal's objections and grant its counterproposal.

Respectfully submitted,

LAKESHORE MEDIA, L.L.C.

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June 11, 2003

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**CERTIFICATE OF SERVICE**

I, Lisa Balzer, hereby certify that on this 11th day of June, 2003, copies of the foregoing  
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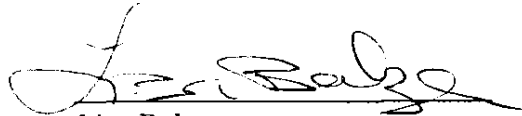
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